

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05-CR-00046-RJC-DSC

USA

v.

JOSEPH MIKE (1)

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ORDER

THIS MATTER is before the Court upon motion of the defendant for compassionate release from custody under the First Step Act of 2018 claiming that his mandatory life sentence presents extraordinary and compelling reasons for relief. (Doc. No. 153 at 3).

Section 603(b) of the Act amended 18 U.S.C. § 3582(c)(1)(A), which previously only allowed a court to reduce a term of imprisonment for “extraordinary and compelling reasons” on motion of the Director of the Bureau of Prisons. Now a court may entertain a motion filed by a defendant: (1) after full exhaustion of all administrative rights to appeal, the BOP fails to bring a motion on his behalf; or (2) after the lapse of 30 days from the receipt of such a request by the warden of his facility, whichever is earlier.

Here, neither the motion nor the attached materials show that defendant has made a request to the warden for compassionate release. See 28 C.F.R. §571.63(a) (designating Administrative Remedy Procedure for appeal of warden’s decision); and 28 C.F.R. §542.15(a) (defining stages of appeal to finality). Therefore, the Court is without authority to consider the merits of his claim.

IT IS, THEREFORE, ORDERED that the defendant's motion, (Doc. No. 153), is **DENIED**.

The Clerk is directed to certify copies of this Order to the defendant, the Federal Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: September 4, 2019

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

